IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.741 OF 1997

Shipping Corporation of India Ltd. ...Appellant
Vs.
Smt. Devkar Ishwarbhai Patel ...Respondent

Mr.S.K. Talasania, Sr. Advocate with Mr. S.U.Uttam & Ms. B. Grover i/b. M/s. Mulla & Mulla & CBC for Appellant

Mr. N.M. Ganguli, Advocate for Respondent

CORAM: SMT.ROSHAN DALVI,J.
DATED: 7TH JUNE, 2007

ORAL JUDGMENT

1. This Appeal challenges the judgment dated 2nd May, 1997 of the Commissioner under under Workmen's Compensation Act and Judge, IIIRD Labour Court, Mumbai granting compensation of Rs.4,61,985/- to the Respondents herein upon the death of one Ishwarlal Hirabhai Patel, engaged by the Appellants as their Engine Sarang. It has been the case of the Appellants that the said Patel committed suicide, a log book entry was made. Suicide note was found. An inquiry of the incident for determining the cause of the death was conducted and it was held in the inquiry that the said Patel committed suicide. No compensation is payable in case of

suicide. There is no other agreement entered into by any union in respect of Workmen's Compensation for payment upon the death by such means. Hence, the Respondent is not entitled to claim any compensation.

2. It has been the case of the Respondent that the death of the said Patel was by an accident and hence, compensation under the Workmen's Compensation Act can be granted. The application was made by the Respondent under the Workmen's Compensation Act. The first issue before the learned Commissioner and Judge hearing the application was whether the said Patel died by an accident on 4th June, 1995. Though his findings are in the affirmative, the judgment does not show how the Respondent proved the accident. Para 9 of the judgment, after referring to the facts of the case, shows that an inference can be drawn that the deceased must have plunged in the sea or somebody must have thrown him in the sea while on his duty. The learned Judge has observed that there is a noting on record that the deceased seaman wanted to end his life by jumping over board due to insanity or mental depression due to chronic exceptional risk. Such noting, if any, showing the deceased seaman jumping from the board is a part of what the appellants have produced in his suicide note. Hence, it cannot be seen that the factum of accident is proved by the

respondent. Consequently the judgment that the said Patel died due to an accident and not by suicide cannot be sustained.

3. However, the appellants have contended specifically that the said Patel committed suicide relying inter alia upon the log book entry. That entry is sought to be proved in the examination of one Parmeshwaran Subramanian. The evidence of this witness shows that the log book entry bears the signature of Mr.A.R. Telichari. Hence his evidence proved the signature on the log book entry. It does not prove the truth of the contents of the log book entry. His cross examination shows that there were atleast two persons mentioned in the log book entry who were then working with the Corporation. They have not been examined to prove the log book entry.

4. Justice demands that the documents produced by the appellants be required to be proved by them. An opportunity in that behalf is, therefore, required to be granted.

5. The Counsel on behalf of the appellants contends that in that case the appellants be allowed to prove even other documents which have yet not been proved. Hence, the appeal is disposed off in terms of the following order :

(i) The impugned judgment dated 2nd May, 1997 of the Commissioner under the Workmen's Compensation and Judge, III Labour Court, Mumbai is set aside and the matter is remanded.

(ii) The said Commissioner and Judge shall allow the appellants to lead further evidence to prove the documents relied upon by them.

(iii) The appellants shall be entitled to tender affidavits of examination-in-chief of any further witness to prove the documents relied upon by them.

(iv) The Respondent shall be entitled to cross examine those witnesses.

(v) The Respondent shall also be entitled to lead any further evidence, if any, available to Respondent.

(vi) The matter shall then be disposed off on merits.

(vii) The Appellants shall file further affidavits of examination-in-chief of all their witnesses within 3 weeks from today. If the affidavits are not filed no further time shall be granted to the Appellants.

Thereafter the learned Commissioner and Judge shall allow the Respondent to cross examine the witnesses.

(viii) The Commissioner and Judge shall endevour to dispose off this matter within period of three months after the affidavits in examination-in-chief are filed by the Appellants.

(viii) The Commissioner shall assign this matter specifically to any Additional Commissioner and Labour Judge presiding in the Courts as of now.

(SMT. ROSHAN DALVI, J.)